

CHAPTER 11
SEPARATIONS, DISCIPLINARY ACTIONS
AND REDUCTION IN FORCE

[Prior to 11/5/86, Merit Employment Department[570]]
[Prior to 1986, see Executive Council[420] Ch 10]

581—11.1(19A) Separations.

11.1(1) *Resignation, retirement, phased retirement, early retirement, or early termination.*

a. To resign or retire in good standing an employee must give the appointing authority at least 14 calendar days' prior notice unless the appointing authority agrees to a shorter period. A written notice of resignation or retirement shall be given by the employee to the appointing authority, with a copy forwarded to the director by the appointing authority at the same time. An employee who fails to give this prior notice may, at the request of the appointing authority, be barred from certification or appointment to that agency for a period of up to two years. Resignation or retirement shall not be subject to appeal under 581—Chapter 12 unless it is alleged that it was submitted under duress.

Employees who are absent from duty for three consecutive workdays without proper authorization from the appointing authority may be considered to have voluntarily terminated employment. The appointing authority shall notify the employee by registered letter (return receipt requested) that they must return to work within two workdays following receipt of the notification or be removed from the payroll. If the appointing authority receives notice from the U.S. post office that the letter was undeliverable, the employee may be removed from the payroll five days following receipt of that notice. The appointing authority shall consider requests to review circumstances.

b. A full-time employee who is at least 60 years of age and who has completed at least 20 years as a full-time employee may, with approval of the appointing authority, participate in the phased retirement program. The request for participation shall specify the number of hours per week the employee intends to work for each year of the program.

Participants shall be in pay status a maximum of 32 hours per week and a minimum of 20 hours per week during the first four years in the program. After the completion of four years in the program, participants shall be in pay status a maximum of 20 hours per week for the fifth year in the program. An employee may not increase the number of hours in pay status once participation in the program has begun. An employee may participate for a maximum of five years in the program. At the conclusion of the agreed upon period of participation in the program, the employee shall retire from state employment.

An employee participating in the phased retirement program shall receive holiday pay and accrue vacation and sick leave on a pro rata basis in accordance with the number of hours in pay status in the pay period. During the period of participation in the program, all other benefits shall be commensurate with full-time employment.

Participation in the phased retirement program shall serve as a written notice of intent to retire on the date specified in the agreement unless the employee retires, resigns, is discharged, or receives long-term disability prior to that date. Participants are eligible to elect early retirement or early termination incentives in lieu of completing the phased retirement agreement.

An employee who participates in the phased retirement program shall not be eligible to return to permanent employment for hours in excess of those worked at the time of retirement.

c. Employees who received early retirement or early termination incentives provided by 1986 Iowa Acts, Senate File 2242, shall not be eligible for further state employment.

d. Separation from employment for purposes of induction into military service shall be in accordance with 581—subrules 14.6(2) and 14.9(2).

e. A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

11.1(2) *Expiration of appointment.* When an employee is separated upon the expiration of an appointment of limited duration, the appointing authority shall immediately report the separation to the department on forms prescribed by the director.

11.1(3) *Early retirement incentive program—1992.*

a. This early retirement incentive program is provided for in 1992 Iowa Acts, House File 2454. To be eligible to participate in this program an employee must be at least 59 years of age at the time of termination, have a total of at least 20 years of continuous or noncontinuous membership service, including buy-back or buy-in service, in the Iowa Public Employees' Retirement System (IPERS) or the Public Safety Peace Officers' Retirement, Accident, and Disability System (POR), and be participating in one of the state's group health or dental insurance plans at the time of termination. Employees on the payroll who meet these criteria and who are receiving workers' compensation are also eligible to participate.

b. To be a program participant, employees must complete an early retirement incentive program application form and send it to IPERS or POR prior to November 15, 1992, and must terminate employment no sooner than May 15, 1992, and prior to January 15, 1993. The IPERS address is P.O. Box 9117, Des Moines, Iowa 50306. The POR address is Wallace State Office Building, Des Moines, Iowa 50319.

c. For participating employees, the state's share of the health insurance premium, or the state's share of the dental insurance premium, or both, will continue to be paid by the state. The amount of the state's share will be capped at the amount that was being paid upon termination. The balance of any premium amounts is to be paid by the participating employee. Prior to or after termination, participants may choose to move to a health insurance plan that has a less costly state's share. If the participant moves to a plan with a less costly state's share, the amount paid by the state will be capped at the state's share for the less costly plan. Thereafter, under no circumstances will a previously reduced or capped state's share rate be increased for any participant. The state's share will then continue at that capped rate through the last day of the month prior to the month in which the participating employee reaches age 65.

d. If a program participant dies before reaching age 65, the state's share of health insurance premium, or the state's share of the dental insurance premium, or both, will continue for the dependents who are listed on the employee's health insurance care contract, dental insurance care contract, or both, through the last day of the month prior to the month in which the program participant would have reached age 65. Dependents may then purchase a conversion policy. Contract status changes, i.e., family to single, may occur for the surviving spouse, if applicable.

e. If a program participant or the spouse of a program participant has an event that would change the contract status from family to single, this change will be allowed. In that case, the state's share of the premium will be reduced to and capped at the single plan rate at the time of the contract change. If a program participant has an event that would change the contract status from single to family, this change will be allowed. However, the state's share of the premium will continue at the capped single plan rate. Under no circumstances will a previously reduced or capped state's share rate be increased for any participant.

f. If a program participant has a double-spouse contribution contract at the time of termination, the double-spouse contribution will continue until the earlier of: the death of either spouse, the dissolution or legal separation of these spouses, the last day of the month prior to the month in which the program participant reaches age 65, or the date the remaining working spouse terminates employment.

g. Under no circumstances will a previously reduced or capped state's share rate ever be increased for any participant for any reason.

h. Employees who participate in this program are not eligible to accept any further employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

i. Any employee who participates in this early retirement program and who is later approved for state group disability benefits is exempt from further participation in this program. In addition, the state's share of insurance premiums already paid, from the time of termination until long-term disability payments begin, may be recouped by the state and returned to the department of management for repayment to the originating fund. However, any program participant's payment toward health insurance premiums during that period will be applied toward the employee's cost of the coverage.

11.1(4) Sick leave and vacation incentive program—2002.

a. This termination incentive program is provided for in 2001 Iowa Acts, Senate File 551. To be eligible to participate in this program an employee's length of credited service and the employee's age as of December 31, 2002, but for participation in this program, must equal or exceed 75 years, including buy-back or buy-in service in the Iowa public employees' retirement system (IPERS) or in the public safety peace officers' retirement, accident, and disability system (POR). Employees on the payroll who meet these criteria and who are receiving workers' compensation on and after November 20, 2001, are also eligible to participate.

(1) Age shall be determined in years and quarters of a year.

1. The birth year is subtracted from 2002 to obtain the total years.

2. To calculate quarters:

- If the birth month is January, February, or March, one year shall be added to the total years calculated in 11.1(4) "a"(1)"1";

- If the birth month is April, May, or June, .75 of a year shall be added to the total years calculated in 11.1(4) "a"(1)"1";

- If the birth month is July, August, or September, .50 of a year shall be added to the total years calculated in 11.1(4) "a"(1)"1";

- If the birth month is October, November, or December, .25 of a year shall be added to the total years calculated in 11.1(4) "a"(1)"1."

(2) Length of credited service shall be calculated by IPERS or POR service credit, pursuant to each system's respective rules and regulations.

b. To become a program participant, an employee must complete and file a program application form on or before January 31, 2002, and must terminate employment on or before February 1, 2002.

c. For purposes of this program, the following definitions shall apply:

"Employee" means an employee of the executive branch of the state who is not covered by a collective bargaining agreement, including an employee of a judicial district of the department of correctional services if the district elects to participate in the program, an employee of the state board of regents if the board elects to participate in the program, and an employee of the department of justice. However, "employee" does not mean an elected official.

"Participating employee" means an eligible employee who, on or before January 31, 2002, submits an election to participate in the sick leave and vacation incentive program and terminates state employment on or before February 1, 2002. For the purposes of this program, a person remains a participating employee after payments made hereunder cease.

"Regular annual salary" means the employee's regular biweekly salary on the date of termination multiplied by 26.

d. A participating employee will receive the cash value of the employee's accumulated sick leave, not to exceed 100 percent of the employee's regular annual salary, and annual leave accrued balances. The state shall pay to the participating employee a portion of the combined dollar value of the accrued sick leave and annual leave balances each fiscal year, for a period of five years on the following schedule:

(1) Upon termination, in the first fiscal year of the program, the employee shall receive 10 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

(2) In August of the second through the fourth fiscal years of the program, the employee shall receive 20 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

(3) In August of the fifth fiscal year of the program, the employee shall receive the remaining 30 percent of the total cash value of the aforementioned calculation for sick leave and annual leave.

e. A participating employee, as a condition of participation in this program, shall waive any and all rights to receive payment of a sick leave balance pursuant to Iowa Code section 70A.23 and payment for accrued vacation pursuant to Iowa Code section 91A.4 and shall waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

f. The administrative head, manager, supervisor, or any employee of a department, agency, board, or commission of the state of Iowa shall not coerce or otherwise influence any state employee to participate or not participate in this program.

g. In the event a program participant dies prior to receiving the total cash value of the incentive addressed in paragraph 11.4(1) "*d.*," the participant's designated beneficiary or beneficiaries shall receive the remaining payments on the schedule developed for such payments.

h. An employee who elects participation in this program, from the date of termination from employment, is not eligible to accept any further permanent employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

581—11.2(19A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

11.2(1) Suspension.

a. Suspension pending investigation. An appointing authority may suspend an employee for up to 21 calendar days with pay pending an investigation. If, upon investigation, it is determined that a suspension without pay was warranted as provided in 11.2(1) "*b*"(1) below for an employee covered by the premium overtime provisions of the Fair Labor Standards Act, the appointing authority shall recover the pay received by the employee for the imposed period of suspension without pay.

b. Disciplinary suspension. An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days as provided in either subparagraph (1) or (2) below. A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action.

(1) Employees who are covered by the premium overtime provisions of the federal Fair Labor Standards Act may be suspended without pay.

(2) Employees who are exempt from the premium overtime provisions of the federal Fair Labor Standards Act will not be subject to suspension without pay except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director. Otherwise, when a suspension is imposed on such an employee, it shall be with pay and shall carry the same weight as a suspension without pay for purposes of progressive discipline. The employee will perform work during a period of suspension with pay unless the appointing authority determines that safety, morale, or other considerations warrant that the employee not report to work.

11.2(2) Reduction of pay within the same pay grade. An appointing authority may reduce the pay of an employee who is covered by the overtime provisions of the federal Fair Labor Standards Act to a lower step or rate of pay within the same pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

Employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act will not be subject to reductions of pay within the same pay grade except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director.

11.2(3) Disciplinary demotion. A disciplinary demotion may be used to permanently move an employee to a lower job classification. A temporary disciplinary demotion shall not be used as a substitute for a suspension without pay or reduction in pay within the same pay grade. An employee receiving a disciplinary demotion shall only perform the duties and responsibilities consistent with the class to which demoted. An appointing authority may disciplinary demote an employee to a vacant position. In the absence of a vacant position, the appointing authority may effect the same disciplinary result by removing duties and responsibilities from the employee's position sufficient to cause it to be reclassified to a lower class. A written statement of the reasons for the disciplinary demotion shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

No disciplinary demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being eligible for appointment. Disciplinary demotion of an employee with probationary status to a position covered by merit system provisions shall be in accordance with 581—subrule 9.2(2).

An agency may not disciplinarily demote an employee from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee's written consent regarding the change in coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.

11.2(4) Discharge. An appointing authority may discharge an employee. Prior to the employee being discharged, the appointing authority shall inform the employee during a face-to-face meeting of the impending discharge and the reasons for the discharge, and at that time the employee shall have the opportunity to respond. A written statement of the reasons for the discharge shall be sent to the employee within 24 hours after the effective date of the discharge, and a copy shall be sent to the director by the appointing authority at the same time.

When an employee occupies a position where a current qualification for appointment is based upon the required possession of a temporary work permit or on the basis of possession of a license or certificate, and that document expires, is revoked or is otherwise determined to be invalid, the employee shall either be discharged for failure to meet or maintain license or certificate requirements, or otherwise appointed to another position in accordance with these rules. This action shall be effective no later than the pay period following the failure to obtain, revocation of, or expiration of the permit, license, or certificate.

When an employee occupies a position where a current qualification for appointment is based upon the requirement of an approved background or records investigation and that approval is later withdrawn or unobtainable, the employee shall be immediately discharged for failure to maintain those background or records requirements or may be appointed to another position in accordance with these rules.

11.2(5) Appeal of a suspension, reduction of pay within the same pay grade, disciplinary demotion or discharge shall be in accordance with 581—Chapter 12. The written statement to the employee of the reasons for the discipline shall include the verbatim content of 581—subrule 12.2(6).